

THE  
CASE  
OF

Sir *JOHN LENTHALL* Knight,  
Marshall of the *Vpper-Bench* prison.

Humbly

Presented to those in **AUTHORITY,**

AND

To all Rational and indifferent  
men.



London, Printed in the year 1653.

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# THE C A S E

OF

Sir JOHN LENTHAL Knight,  
Marshal of the Upper-Bench Prison.



That malice which hath brought this affliction upon me could have been contented with ordinary and legall prosecution; and if my estate and livelihood were the things only in question, and my good name not sullied with infamous and filthy slanders, I should in all probability rather patiently have fate down under my sufferings, then have been indue'd to lay open my condition unto the World. But since I cannot but be of opinion that many Persons both of worth and conscience, content to rest in the first Representations, may by this means be brought to a true and just knowledge of the whole matter, and consequently be reduc'd to the moderation

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ration of doing what is but just, and that my good Name, (which to an honest man ought to be dearer then life) may be in some measure retriued, I could not but put down as well the true circumstances of my condition, as the violent and passionate proceedings of my prosecutors against me.

I have been these twenty two yeers together *Marshall* of the (Kings Bench, now the) *upper Bench* Prison by Letters Patents under the great seal of *England*, wherein as I am inwardly satisfied to have behaved my self uprightly and legally, so till this storme overtook me, I hope it was without infamy or reproach. But it is the misfortune of such employments as mine, that we must necessarily in doing our offices raise up to our selves enemies. For it is so difficult, if not impossible, to carry our selves even between *Creditor* and *Debtor*, that there is no avoiding of it, but one of them will be dissatisfied. For if the *Debtor* be either unruly, or enable to put in security for his true imprisonment, and so kept safe, he straight crieth out of *Restraint*, and harsh usage, if he put in security, and lie in the *Rules*, or legally go abroad about his occasions with a Keeper, then does the *Creditor* cry out of too much Liberty, and it may be files for a Bill for an escape. So that let a man carry himself with all the care and circumspection which is possible, he shall be sure to meet with clamours and enemies, and these so much the more, in regard that being persons either in low condition or decayed fortunes, they account it somewhat either of ease or pleasure to revile or vex those whom they look upon as the instruments of their misfortunes.

Yet

Yet upon the dissolution of the late Parliament there was an Order obtained from the new Counsell of State, bearing the date the      of April 1653. empowering

to enquire into all matters concerning *Prisons* and Keepers of *Prisons*; by vertue whereof, I was summoned to appear before them, which I obeyed. But it was a wonder to me (who had been a faithfull Servant to the Parliament in their most doubtfull and difficult times, and who had been constantly in all their commissions, and stuck to them throughout, when others declined them) to see Mr. *Fountain* in the Chaire, one of the most active for the late King, and one by whose power and interest at *Oxford*, my place was given away for disobeying a Warrant of the late Kings, dated the 23 of *November* 1653. for the discharge of *William Cobb*. Yet humbly submitting (as it was my duty) to the Authority set over me, and withall weighing with my self the right that all Governours have to call whom they please to their assistance; besides, hoping that Mr. *Fountain* had manifested unto them his hatred to his former Principles and courses, I, with all the submission I could, prepared my self to give the best satisfaction that lay in my power unto that Committee.

The *General* things they fell upon, were, first, about the *List* of my *Prisoners*, a perfect and full copie whereof I delivered in. Next, about the *extent* and liberty of the *Rules* of the *Prison*; by which

means (as was alledged) there are many *escapes* occasioned, and *Creditours* extremely delayed, if not absolutely defrauded. In answer to this, I shall only say, That the Prison-house being so little, as that it is not able to containe a fourth part of the Prisoners, my Predecessors in their severall times, and that alwaies by permission and appointment of the Judges, used to lodge them (having first taken security for their true imprisonment) in the houses about, and that they call the *Rules*: Which, as it avoids a grand inconvenience (for otherwise every particular man must have a particular keeper, which were a charge to him insupportable, or else the *Marshals* of the Prison were to maintaine them, and so he should be a loser by his office) so it brings this great advantage and security to the *Creditour*, that the security being double the debt, it is thereby strengthened, and the *Creditor* in better probability to recover his own. For if any escape be made, I am liable to pay the debt, and upon recovery had against me at Law, I either resort to the security, or turne it over to the *Creditour*, by which means many have recovered their debts, which probably otherwise they had not done. But these Bonds being of late doubted to be within the Stat. 23 H. 8. (though ever before held good, and so often adjudged) many have under this pretence, escaped or violently broke Prison, and thereby both defrauded the *Creditors*, and occasioned great damages to be given against the *Marshalls*.

And although I have done nothing but what by Law was formerly accustomed and justifiable, yet

I desire a difference may be made between *voluntary* and *involuntary* escapes; that is to say, escapes happening either by my granting too much liberty, or by negligence or connivence; and those which in despite of the strength of the Prison, the care and diligence of the watchmen, are oftentimes made by *desperate* persons, groaning under their wants, and impatient of *restraint*: And therefore I appeal to all the Nation, whether there was yet ever any debt recovered against me for an escape, which I have not satisfied. And as I cannot be denied the liberty of a true *Englishman*, to make my best defence when I am impleaded at Law; so if it can be proved that any escape hath been *wilful* in me, or that I ever took a penny of money for granting any *illegal* Liberty, I shall be content to suffer all that which the malice of my adversaries would inflict upon me.

Nor it is enough to say, that the best and most considerable Prisoners should be put into the house, for so the more insolvent should be set at randome, and their debts by this means become desperate. For the security of the others (besides their owne reputation) renders them as safe in the Rules, as if they were close: and there is many a man, that will rather be bound in a bond of 1000 *l.* for a mans true imprisonment, then be bound with him in a bond of 100 *l.* debt.

But when they came to descend into *particular* matters, it was very strange to me to see Mr. Fountain (I will not say more like a feed Lawyer, or an enraged enemy, then a sober judge) afford so much countenance to all Petitions and complaints that came in

against me, to stretch matter further then 'by Law they would endure: And when I desir'd but Copies of Petitions, that I might be the better enabled to make my defence, utterly to refuse me, and put me to answer upon the place: which when I endeavoured to do, as well as the smalness of the time, and my owne surprisal would permit me, I was sundry times reviled, many opprobrious speeches, both against my self and my nearest relations, were publickly uttered, without the least control or check. The Witnesses which I brought in order to my justification, were discountenanced; Mr. *Mountain* in the mean time privately commenting and glossing his owne conceptions, as I have reason to conceive, and writing them downe, so that things seemed to be carried on (I will not say it was by design, or unjustly) meerly in a manner to compass my ruine.

The Petitions and charges that came in, to look on the number, were a great many, on the weight of them, a very few. Some of them are either so false or inconsiderable, that they are not worth mentioning here, as I have done elsewhere; some the very stating of my case immediately detects the malice and impertinency. But since that there is one particularly insisted upon as a matter very horrid and ugly, I shall not forbear to set it down, that by the estimate of this grand business an account may be taken of the rest.

And the business stands thus:

One *John Gyles* was committed to the upper Bench Prison, Feb. 10. 1650. upon an action of Trespass, at the suit of *Edmund Child*, but not upon Indgement



or Execution. This *Guyes* broke the Prison-house, (he being kept in close Prison, together with four others) in the night time, having burned down the window with hot irons, poisoned a fierce Mastiffe, and given some *Opiate* Medicine to the watchman, where-with he laid him in a dead sleep all night, and by that means the said *Guyes* went away in the night time by ladders of ropes provided for that purpose, as is proved by many witnesses.

Thereupon *Child* brings his Action of the case against Sir *John Lenthall* for 579 *l.* for the escape, and at a tryal at *Guildhal* had given him by the Jury (who sa'l'd not to be his friends at a dead lift) the whole money and damages, 584 *l.* 13 *s.* 4 *d.* For reliefe of this verdict, I preferr'd a Bill in *Chancery*, to which he put in an unperfect answer, and sate in contempt. Hereupon I mov'd at the *Rolls* for an *Injunction*, to stop proceedings at *Common Law*, which the *Master* of the *Rolls* (being satisfied that *Child* in equity ought to have no more of me, then he could have recovered of *Guyes* at *Common Law*; and for that a man may lay an action of 10000 *l.* and yet possibly not recover 100 *l.* and for that this was the onely course I had left to make *Child* confess what his debt really was, he having already in his answer confessed 100 *l.* given by the Verdict more then was due to him) granted, as well for these reasons, as that it had been the constant practice and rule of that Court, to grant injunctions upon the like occasions. And whether I had not reason to seek for reliefe in *Chancery* or no, let any man judge: For though there were abundance of equitable circumstances, which

I could not make out at my Tryal; yet by that (among other things) which I said before the *Equitie* was very evident.

Nay this Case among others was referr'd by the Parliaments Order of the nineteenth of Jan. 1653. to the Justices of the *Upper Bench*; who upon hearing of the whole matter, declared me not in fault for the escape; and the business therefore onely proper for the *Chancery*: wherein, being a Court of Equity, I was onely relievable: For certainly the *Verdict* was a strange one; and the oppression that lyes upon me by the means of it, as heavy, and of as ill example, as can be possible.

This is the great business as to the *Execution* of my *Office*; but because the rage of my enemies was not content to stay here, but would strike at my life as well as my *liberty*, they have set abroad an old business voted scandalous by the Parliament many years ago, and threatned to try me for my life about it. The business stands thus.

*George Smithson* was committed to the upper Bench Prison, June 13. 1637. where he carried himself with such extreame disorder, that in the year 1640. he was put into the common goale, where he was not only so troublesome, but also so dangerous to the Prisoners, that they petitioned for his removall. Hereupon I ordered him every night to be put into the house which is set apart for unruly Prisoners. There continuing his old manners, he was kept for some time, all which space he was fed with viſualls sent from my own Table; and the Stewards of the house had exprefs order to take care that he should be constant.

stantly relieved. He died the 5 of *Sept.* 1640. A Coroner sate upon him, a Jury was sworn, six Prisoners, and six neighbours, who found that *Smithson* dyed by the visitation of God, and not otherwise or by any other means, as appears by the Record.

I thank God I have this comfort yet left me, that I can say, I finde not in my heart to thirst after blood. And certainly these people, had they not been blinded by their owne malice, and carried on by an extream desire of my ruine, might have found out somewhat more probable to have employ'd their *perjuries* about, then for to say that I should hazard my *Salvation*, my *Reputation*, my *Life*, the well-being of my *Wife* and *Children*, and all this for the blood of a poor *Lunatick* in Prison, whom till that time I had never known, and from whose death I could draw no advantage.

The very same men that have reviv'd this complaint against me before this Committee, brought the same complaint to the Parliament seven or eight years since, at which time it was examined with all industry, scrutiny, earnestness, and integrity possible: all their owne examinations, and those of what witness they could produce, were taken, and several persons were admitted by that Committee, in the name and behalf of the City, to take notice of all proceedings. The Committee after a full hearing, made the report to the Parliament, that they found the Accusations false, and prosecuted without cause; whereupon, the 5 of *Sept.* 1645. they voted, *That the complaints were raised and prosecuted without any ground at all, falsely, maliciously, and scandalously,*

and that William Pendred, Edward Jenks, Hannah his wife, James Freez, and Stephen Pratt were principal instigators and prosecutors of these proceedings, and do deserve severe and exemplary punishment, and accordingly refer'd it to a Committee to consider what exemplary punishment were fit to be inflicted upon them.

Not indeed did they vote it *malisious* without ground, for Freez & Jenks, with one Magick (who is a great Rickler in the business, though not so openly as the other) having been formerly Prisoner in the *Upper Bench*, and there very unruly and mischievous, the Judges did remove them to *Newgate*, which first kindled in them that malice, that hath several times since attempted my life.

Notwithstanding all this, their wickedness was so restless, that though they saw how little they were able to satisfie any just men of the ground of their complaints, they had the impudence to renew the business again at the Committee for the Army; who also upon examination, voted, Aug. 24. 1649. to the same purpose as the Parliament had formerly done; yet after all these repulses they have again brought it to this Committee, where it seems it receives freest entertainment.

These are the two principal things, out of which, with some other helps (I will not say additions of his owne) Mr. *Fountain* hath stuff'd his papers; and at last hatch'd a *Report*. But however it is, though it be not fitting for me to say, that he carried himself there rather like an *Adversary*, then a *Judge*; so it should seem he hath a mind, by the carriage of this business, that men should finde him true from a

Judge

Judge to a *Solicitor*. For this report of his, he very assiduously promotes to the Committee of Parliament; who upon the report, order'd July 25. 1653. that I should appear before the same Committee the next day, which was *Tuesday* following, at 3 in the afternoon, and bring with me a perfect List of the names, surnames, places of last abode of all the prisoners in custody, since the last list in print, together with all Bonds, Statutes, Judgements, Warrants of Attourney to acknowledge judgements to Creditors, or others in their behalf.

Hereupon I petitioned the Committee, *Tuesday* July 26. 1653. in regard I had not received their Order till late, and that I was threatned to be arrested for several sums of money, as I gave my attendance, That I might either be exempted from personal attendance, or else be protected from arrests; that I might have copies of reports and Petitions, and be admitted to put in my defence in writing, or by my Counsel. But being expressly commanded to attend the *Thursday* after, I accordingly did so, and carried in the List, but shew'd them that I could not deliver in the Bonds, by reason they were the onely security which enabled me to perform several trusts settled out of the Office, and the onely defence I had against all escapes, sued and to be sued. But the Committee press'd me for a positive answer, whether I would deliver them or no; and though I Petitioned for it, would grant me no longer time then the next morning for my positive answer; which I was to deliver to the Chairman by 10 of the clock. According to the appointment, next morning, being *Friday*, I delivered a letter to the Chairman, with a paper of Rea-

sons enclosed, why I could not in discretion and safety deliver in the Bonds: both which, since I am so much concerned in them, for better satisfaction follow thus.

THE  
HUMBLE ANSWER  
OF  
SIR JOHN LENTHAL Knight,  
Marshal of the Upper-Bench Prison.

**I**N obedience to the commands of this Honourable Committee, whose persons and power in all humility I ever shall have in high esteeme, I humbly offer, That the possibility that the Marshall of the Upper Bench hath for the preservation of such Prisoners as shall be thereunto Committed, (by reason of the smalness and unsafeness of the Prison,) are onely such Collateral securities as by his own industry and endeavours he can obtaine from persons that shall engage for the true imprisonment of the Prisoners, which securities (howsoever good in Law, as he humbly conceives) are onely particularly belonging to himself, and to his own private Estate, and to such others as have likewise interest in those securities as well as himself, and no way concerning the publick interest, And by the Law of this Land are disposabable by him, and such other particular persons to whom they in right and equity do belong, as any other personal securities to any other particular person: That this present Parliament by their most pious and religious Declaration.

vation lately set forth, to the contentment of many thousands of this Nation, encourages him (with all thankfull acknowledgements) to assure himself, That as the Parliament, the highest and supreme power of the Nation, hath declared, that they will be as tender of Lives, Estates, Liberties, just Rights and Properties of all others, as they are of themselves and their Posterities; so this Honourable Committee, who are a part of that honorable Body, will not be offended, if he the said Sir John Lenthall shall on his and the others behalf, presume upon that Honourable favour and grace, which the said Parliament hath with such abundant care offered to the People, and therefore cannot in justice or equity deliver up such securities, which cannot be usefull or advantageous unto him by the Law (as appears by his former Reasons humbly offered to the Committee, and other grounds) if taken from him, without a particular Act of Parliament therein to relieve him. This being thus humbly offered, without the least disregard to the power of this Committee, or disrespect to any of their persons, whom, as becomes him, in the place wherein God hath placed you, he shall ever honour. This, in all humility assuring himself of justice and equity according to the known rights of Law and Property.

July 29.  
1653.

John Lenthall.

Reasons

*Reasons humbly offered and presented to the honourable Committee for Prisons and Prisoners ; wherefore the Bonds and Securities taken for the true imprisonment of Prisoners by Sir JOHN LENTHAL Knight, Marshal of the Upper Bench Prison, cannot safely be delivered out of Sir JOHN LENTHALS hands.*

1. **F**Or that many of the said Bonds and securities, upon escapes made, are already delivered to Creditors, thereby to recover their debts due from the Prisoners; And Sir John stands engaged by his promise to deliver divers more.

2. For that as soon as the Prisoners shall take notice their securities are out of Sir John Lenthal's power, they will and may take Escapes; and Sir John having no other way to restrain them, or to secure himself, other then by his bonds and securities, shall be left without remedy.

3. For that there now being severall Actions of escape depending against Sir John Lenthal, amounting



to 10000. l. and severall recoveries had; Sir *John* hath no other means to secure his person and estate from the said Actions, and recoveries, but by the said bonds and securities, many of which he hath delivered to his Attornies to put in suit, to be indemnified from the said Actions and recoveries.

4. For that the said Bonds and securities are made to him in his name, for his indemnity, and sueable onely by him, and in his name, and can onely be released by him.

5. For that the said Bonds, &c. are not forfeited or to be sued untill after escapes brought against Sir *John Lenthall*, so that if the same should be delivered out of his hands, the Prisoners, Creditors, Sureties, and Sir *John Lenthall*, may be much damnified.

6. For that upon the discharge of Prisoners, (which is daily) the said bonds and securities are to be delivered up, otherwise the sureties may be endangered, and the Prisoner damnified upon his counter-security given by him to his sureties.

7. For that every defendant hath liberty to crave over of the condition of the bond upon which he is sued, before he plead, which Sir *John* not having in his hands to produce, will be delayed in his suit, or lose the benefit of his Actions.

8. For that the Bonds and securities taken for true imprisonment, are Sir *John Lenthall's* undoubted  
right

*right and property*, which he hopeth this Honorable Committee will inviolably defend.

9. For that the sureties, who are most of them *Tradesmen* in this City, and live by their *Credits*, and will be bound for a Prisoners true imprisonment, when they will not be bound with him for any money, when they shall perceive their names are published, and their bonds put to other uses then they intended them, will presently call in their bonds, and that will be a means to deter all others from being bound: which will prove a very great prejudice to the Creditor.

10. For that such bonds and Securities as are in *Sir John's* hands were given to him by the Prisoner and his sureties, by way of trust, and upon condition that no use shall be made thereof but in case of *Escape*; And therefore the Prisoner having made no escape, *Sir John* cannot without breach of trust part with their securities.

The morrow after, which was Saturday the 30 of July, the *House* was made acquainted with this my Answer, who thereupon made an Order for my commitment to the Serjeant at Arms, and another Order that Serjeant *Dendy* should take the care and custody of the Prisoners, which he accordingly did, my self being apprehended with a warrant from Serjeant *Birkhead*, under which durance I now continue, though I could heartily beseech them, in regard of the multiplicity of the troublesome and entangled busi-

businesses that lie upon me, and for that I know not what may be brought out against me, having had so many years to do in a troublesome Office, to be pleased for to take off this restraint from me: which certainly as I cannot see what prejudice could arise from it, all my estate and livelyhood lying at the stake, and it concerning me so neerly to make out my interest; so were it to me a deed of very great mercy and compassion. For as it would be a means to save me from a great charge, which, in the miserable condition I am in, lies heavy upon me; so would it enable me to go about to make such defence against what may be brought against me in behalf of the *Commonwealth*, as that I may thereby enjoy the benefit of the *Law*, & the *freedom* of a native *Englishman*.

For my offences, as they are alledged, falling under the two heads of *Misdemeanour* and *Felony*, I shall humbly submit my self to any fair and legal way of Tryal. If they be meerly *Misdemeanors*, (in case there be any) they are pardoned by the *Act* of *oblivion*, as I conceive. And I could heartily wish they in their wisdoms were satisfied that this restraint upon me were not needful. For they having the Prison, which is both my livelyhood and purchased inheritance, in their hands, it is not to be conceived that I should flinch for it, but endeavour by asserting of my innocency to them, to recover my own right. Besides, if these were so many summed up together, as might render me in their Judgements unfit for the exercise of that Trust, they should sequester the Office at last, and then I hope I might obtain that mercy from them, which was never denied to  
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their actual Enemies, it being my inheritance by Letters Patents under the great Seal of England, and purchased by me at a great rate, But I am more unfortunate; for upon Mr *Fountaines* bare Report and prosecution, I am deprived of the execution of my Office, and the securities are demanded of me, which if I give up, I should be left naked of my defense, and I cannot tell how many Bills may be filed against me before the next Term, and that there may be so much recovered against me, as may ruine me and my posterity, forty times worse then I am already. But I shall say only this by the way, that it be my mis-hap to be the miserable *President* in this case, in what doubt it will leave all other Officers, who have acted according to the old Lawes, and what security they can imagine to themselves, if upon every alteration, or rather, intention of alteration, they shall be called in question for Actions done by vertue of *Lawes* in force. For my part, what I did in the execution of my Office, was nothing but what the *Rules* of the Court, (to which I was a servant) permitted, what my *Predecessors* had constantly practised, and what was not against the *Law* that then stood. If *Accidents*, or *Negligence* of Servants ever occasioned any miscarriage, I appeale to any man who hath evicted me by Law, whether I have not satisfied him. Now if the Parliament in their wisdom think fit, that for the future that Prison be kept by other Rules, and that the present Liberties be retrenched, for my part I shall with all readiness endeavour an Obedience, when I shall know what to do. For as it is not just to punish a man for trespass

trespassing against a Law not made; so it is but common prudence to be directed by those Laws that are already in force.

If I am to be tryed as a *Felon*, I shall beg that according to custome, I should rather be committed to the publick Goal, then left in a Messengers hands, and the informers bound over to prosecute; and for my part, I am so secur'd of my innocency, that I shall alwaies make it my business to desire the hastning of a fair & a legal Tryal; only this I hope I may say, that it will be somewhat hard for any man to know when he is secure from any slanderous or malicious accusation, when the same things, and that by the same men, may be set afoot again, after they had been quash'd by the votes of the Parliament, the Council of Officers, and two several Committees. Yet under this restraint have I patiently endured ever since my commitment, with a resolution quietly to wait, till it please God to move the hearts of the Parliament to consider my innocency. In the meantime, I shall chearfully obey, however they shall dispose of me, and I shall receive all their commands with the due obedience I ought: and truly for my part I should not delay the delivering of the Bonds two houres, if it were not clear unto me that my ruine would immediately follow upon it. And though I am very willing, as I have often said, for to conform my self to all their commandments; yet I could wish that Serjeant *Dewly*, whom they have employ'd in taking care of the Prison, did not seem to be of opinion that I am also committed to his tuition;

for methinkes his Letter of *Aug. 6. 1653.* speaks somewhat to that purpose.

*These for Sir John Lenthal Knight,  
at Lambeth Marsh.*

*Sir,*

I acquainted the Committee the other day, with your answer, with which they were so much dissatisfied, as that they resolved to report your contempt to the Parliament; yesterday they sate not, but adjourned till this afternoon, till when I desired they would forbear acquainting the House, for that you promised you would do your endeavour; of which if you give not a real proof, by a return of the Books wherein all the names of your Prisoners, with their securities and places of aboad are, it will be in vain for you to think of securing your self by a refusal. Sir, The complaints of several Creditours undone by you, are very great, and our Law you know hath condemn'd many a man, who thereupon hath suffered death, though but for the value of a Sheep. Therefore all things considered, it concerns you not to contemn any longer the Authority of the Parliament, who if incensed, as you give them just cause to be, neither you nor yours know what evil to them a day may bring forth——. Sir, The Committee being to meet this afternoon, between 2 and 3 a clock, I have sent the Bearer on purpose to receive your answer, which is expected from you by

*6 Aug. 1653. Sir, Your humble servant,*

*E. Dendy.*

*And*

And now since I have thrown open my condition so nakedly, I leave it to any man to judge whether or no it deserve not pity, my self and family being by this means at the very brink of ruine, and that with such variety of circumstances, as a man cannot sit down to number them. Yet am I prepar'd with all submission to the Parliament, and hope God will so carry on the inclinations of *Injustice*, as that in his good time they will take into consideration my *Innocency*, and withall the number of innocent persons that will be involv'd in my ruine; and therefore so mix their *Injustice* with *Mercy*, as to restore me to my *Liberty* and just inheritance.

